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27/07/2021

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Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Offers of Warrants

Question

For offers of warrants (and other derivative securities) how should 'total consideration' be calculated in respect of the Prospectus Regulation thresholds of EUR 100 000 (Article 1(4), point (d)) and EUR 1 000 000 (Article 1(3))? Should only the consideration for the warrants (if any) be counted, or should the strike price for the underlying securities be added?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission (Published as Prospectuses Q&A 15.7)

Article 1(3) of the Prospectus Regulation [1] refers to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, to be calculated over a period of 12 months. In the case of an offer of warrants, it is considered that the total consideration referred to in Article 1(3) relates to the total consideration for the warrants (i.e. ‘the securities offered’) and therefore the strike price for the underlying securities is not to be taken into account.

To the same extent, for Article 1(4), point (d), of the Prospectus Regulation [2], it is considered that the total consideration as referred to in that Article relates to the total consideration for the warrants and therefore the strike price for the underlying securities is not to be taken into account.

[1] “[...] this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months;”

[2] “[...] an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;”

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.”

